

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE

Submitted on Briefs on June 20, 2005

**SLC, b/n/f EC and MC, v. ALDON JOE DANIEL and the AMATEUR  
ATHLETIC UNION OF THE UNITED STATES, INC., AND AJC, b/n/f  
LAS, v. ALDON JOE DANIEL, and the AMATEUR ATHLETIC UNION OF  
THE UNITED STATES, INC.**

**Direct Appeal from the Circuit Court for Bradley County  
No. V-01-301     Hon. Lawrence Puckett, Circuit Judge**

**Filed July 11, 2005**

**No. E2004-01681-COA-R3-CV**

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Defendant appealed the granting of summary judgment to his co-defendant in plaintiffs' action against defendants. We dismiss the appeal on grounds that notice of appeal was not timely filed.

**Tenn. R. App. P.3 Appeal as of Right; appeal dismissed.**

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., J., and D. MICHAEL SWINEY, J., joined.

Aldon Joe Daniel, Jr., Wartburg, Tennessee, *pro se*.

Gary A. Brewer and Derrick A. Free, Nashville, Tennessee, for appellees.

**OPINION**

Defendant Aldon Joe Daniel has appealed from a summary judgment granted to his co-defendant, Amateur Athletic Union of The United States, Inc. ("AAU"), as to plaintiffs' action against defendants.

The plaintiffs, not a party to this appeal, alleged causes of action against Aldon Joe Daniel for sexual assault and battery upon a minor, and against AAU under the doctrine of respondeat superior and negligent hiring.

On September 11, 2002, the AAU filed a Motion for Summary Judgment as to all claims alleged against it. The Trial Court granted AAU's Motion for Summary Judgment on November 10, 2003, and Daniel filed a Notice of Appeal on May 19, 2004 in the Trial Court clerk's office.<sup>1</sup>

Appellant raises numerous issues on appeal, but we conclude that the dispositive issue is the failure to timely file notice of appeal.

The Trial Court's Summary Judgment recites in pertinent part:

The Court hereby grants the Motion of the Amateur Athletic Union of the United States, Inc., for Summary Judgment and dismisses the plaintiffs' Complaints against the Amateur Athletic Union of the United States, Inc., with prejudice. The Court, under Rule 54.02 of the Tennessee Rules of Civil Procedure, finds there is no just reason for delay and enters this as a Final Order. . . .

Tennessee Rules of Appellate Procedure, Rule 3, provides in part:

(a) In civil actions every final judgment entered by a trial court from which an appeal lies to the Supreme Court or Court of Appeals is appealable as of right. Except as otherwise permitted in Rule 9 and in Rule 54.02 Tennessee Rules of Civil Procedure, if multiple parties or multiple claims for relief are involved in an action, any order that adjudicate fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before entry of a final judgment adjudicating all the claims, rights, and liabilities of all parties.

The exception as presented under Rule 54.02, Tennessee Rules of Civil Procedure reads:

When more than one claim for relief is present in an action, whether as a claim, counterclaim, cross-claim, or third party claim, or when multiple parties are involved, the court, whether at law or in equity, may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of the judgment adjudicating all the claims and the rights and liabilities of all the parties.

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<sup>1</sup>The notice was filed in this Court on July 8, 2004.

Rule 4, Tennessee Rules of Appellate Procedure, provides:

(a) In an appeal as of right to the Supreme Court, Court of Appeals or Court of Criminal Appeals, the notice of appeal required by Rule 3 shall be filed with an received by the clerk of the trial court within 30 days after the date of entry of the judgment appealed from; . . .

In this action, the Trial Court directed the entry of a Final Judgment, pursuant to Tenn. R. Civ. P., Rule 54.02, as to the defendant AAU, and as a result that Judgment was final and not subject to revision at any time before the entry of a final judgment adjudicating the remaining claims as to the remaining parties.

The Notice of Appeal filed on May 19, 2004 states:

Notice is hereby given that Aldon Joe Daniel, Jr., defendant, pro se, above named, hereby appeals to the Court of Appeals, from the final Judgment entered in this action on a Date Unknown and was discovered on April 26, 2004. And no notice was ever given by the Trial Court or the Clerks Office of Pam Mull.<sup>2</sup>

This Notice of Appeal purports to be from the Summary Judgment entered on November 10, 2003.

Accordingly, the 30-day rule for notices of appeal is mandatory and jurisdictional, and this appeal having been filed more than 30 days from the date of final judgment, must be dismissed. *American Steinwinter Investment Group, ex rel, v. American Steinwinter*, 964 S.W.2d 569 (Tenn. Ct. App. 1997).

The appeal of this cause is dismissed, with the cost of the appeal assessed to Aldon Joe Daniel.

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HERSCHEL PICKENS FRANKS, P.J.

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<sup>2</sup>There is a certification in the record, that the Judgment was sent to defendant via facsimile and first class United States mail with postage pre-paid to defendant's address. Tenn. R. Civ.P. Rule 58(2). *See Dulin v. Dulin*, 2003 Tenn. App. Lexis 628. (Tenn. Ct. App. Sept. 3, 2003).